



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

900 Fourth Avenue, Suite 2000 • TB-14 • Seattle, Washington 98164-1012

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

*1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203*

Department of Community, Trade and Economic Development

925 Plum Street SE, Bldg. 4 • PO Box 43173 • Olympia, WA 98504-3173 • (360) 725-4000

September 7, 2004

VIA E-Mail – Hard-Copy to Follow

Bonneville Power Administration

Attn: Communications - DM-7

P.O. Box 14428

Portland, OR 97293-4428

**Subject: BPA Decision Regarding Proposed Grid West Corporate Bylaws.
Comments of:**

Washington Utilities and Transportation Commission

Public Counsel Section, Office of the Washington Attorney General

Washington State Dept. of Community Trade and Economic Development

Thank you for this opportunity to comment on the proposal to adopt corporate bylaws to form and govern a new regional grid-management utility known as Grid West. The undersigned Washington State agencies make the following observations and recommendations to assist BPA as it considers decisions in October regarding the draft Grid West bylaws as well as it's role in other efforts

in the region to improve transmission service and reliability. Our comments include the following points:

- **There is as yet no persuasive evidence that the benefits of the proposed Grid West will outweigh its incremental costs and risks.**
- **Grid West would not be a government.** Incorporation of elements of government-like process (e.g., open meetings) does not make Grid West a government and does not substitute for decision-making by public officials accountable to the voters.
- **Grid West would be a private utility,** albeit one without stockholders. Because Grid West would be spending money and taking risks ultimately paid by electricity consumers and investors, it is important that it have effective forms of operational and financial accountability. The current proposal does not meet these needs.
- **Consultation does not equal accountability.** Consultation with stakeholders is no substitute for real forms of accountability (civic voting, state and local regulatory proceedings, etc.).
- **Diffuse and complex voting procedures within the Grid West membership do not bring meaningful accountability.**
- **Transfer of jurisdiction to FERC from local and state levels reduces real accountability to end-users (voters and/or ratepayers).**
- **A governing board that can self-evolve to expand the role of Grid West unnecessarily and prematurely forces the region to confront later stage functions that are problematic and divisive.**
- **A complex governing structure may come at the price of operational effectiveness.**
- **There may be simpler approaches than Grid West that can improve the region's transmission grid with less disruption to existing institutions, lines of authority, and lines of accountability.**

Washington shares with its neighboring Northwest states and Canadian provinces the great benefits of BPA's development and operation of the Federal Columbia River Transmission System (FCRTS), which is the core of the region's transmission grid. BPA's decisions will similarly be core to any improvements in the expansion, management and operations of the region's transmission grid. Moreover, BPA's decisions concerning the Grid West proposal will, in large measure, determine whether the region's federal and non-federal transmission systems continue to provide reliable and cost-effective service to the citizens of the Pacific Northwest, for whom they were built.

It is of paramount importance to the state of Washington that the Pacific Northwest transmission grid be managed and operated reliably and cost-effectively to support an adequate and environmentally sound power supply for Washington's electricity consumers. It is equally important to ensure that consumers or their representatives have meaningful avenues to influence decisions that affect their utility service, and meaningful redress should problems occur.

As governmental guardians of Washington's electricity consumers, we are keenly interested in the developing proposals to improve the region's grid. It was with this sense of importance that last year we welcomed the commitment by BPA and the region's transmission owners to refocus efforts on identifying *specific* transmission problems and opportunities presented to the region. We understood this commitment to go beyond problem identification and to include evidence-based and region-specific problem solving. Our agencies have devoted considerable staff resources to regional transmission discussions. Most recently, the WUTC has contributed senior staff to the RRG discussions and to the efforts undertaken by certain utilities under the auspices of the Transmission Issues Group (TIG).

The good news is that progress has been made in identifying problems and opportunities. Among these are the need for more comprehensive region-wide planning for transmission system expansion, transmission adequacy standards, the opportunity to utilize more fully the existing transmission system so as to mitigate the demand for expensive new projects, and the need to improve access to transmission capacity and interconnection for new generation, including renewable resource generators.

The challenge facing BPA and the region now is to focus on the most practical, cost-effective, and realistic ways to fix the problems worth fixing and secure the opportunities worth securing. The Grid West proposal is one approach for making grid improvements, but from our vantage point critical questions remain unanswered about this approach.

With respect to the Grid West proposal, BPA has requested comments on the following questions:

- Have the draft bylaws addressed the governance concerns expressed earlier in the region?
- Do the draft bylaws appropriately balance regional accountability with independence and workability?
- Are there other matters BPA should consider in making this decision?

These questions focus mainly on the governance that is included in the Grid West proposal. Because we believe that threshold questions have yet to be answered regarding whether a new grid management institution is necessary and appropriate, we will address BPA's questions in reverse order starting with the most general.

I. Matters BPA Should Consider in Making Decisions Concerning Grid West.

The existence of problems and opportunities in the management, operation, and expansion of the transmission grid means that improvements to the grid are *possible*. But the mere existence of problems and opportunities does not answer the practical questions of whether all possible improvements should be made, or how any such improvements should be accomplished.

Given the importance of the transmission grid for consumer utility service in the region, and given the reliance utilities place on their historical rights to use the grid to provide that consumer service, we believe any proposals to change operation or management of the grid should be tested against three threshold questions. These are questions that we in Washington will use to evaluate Grid West or other proposals to improve the grid. We submit that BPA would also do well to focus on these three questions.

Threshold Questions:

A) Do the proposed changes yield benefits that outweigh the costs and risks?

This question focuses on whether it makes sense to incur whatever costs and risks accompany changes to management and operation of the grid. Do reasonably estimated and quantifiable benefits—for electricity consumers—exceed the costs and risks those consumers would be expected to bear? Moreover, are the net consumer benefits widely distributed across the region, or are they likely to be enjoyed by only a few, in certain locations, while all consumers bear new costs and risks?

B) Is the proposal the simplest that can practically do the job with the least disruption to existing institutions, lines of authority, and lines of accountability?

This is the Occam's Razor question.¹ Simple and uncomplicated solutions are preferable to complex ones, assuming both can get the job done. This question goes beyond measuring just costs and benefits and focuses on the practicality of a proposal. As important, the question includes whether the proposal strengthens or weakens the access consumers or their representatives have to decision-making that affects critical electricity service and redress for decisions that turn out badly. Finally, this question gets at the possibility that a complex change and the ability of a new institution to self-evolve to a grander scope of activity increases the likelihood of unintended and unpredictable consequences.

C) Is there a broad consensus of support for a proposed solution?

Fundamentally, the breadth of consensus supporting a proposal indicates whether that proposal equitably treats parties that rely on the grid and—as a consequence—whether the proposal is politically feasible and sustainable. Given the central role the FCRTS plays in the region's grid, and given the breadth of BPA's customer constituency, we believe that BPA is doing the right thing to

¹ Mediaeval philosopher William of Occam stated a principle of parsimony to encourage emphasis on simplicity in theories, explanations, or solutions to “shave off” that which is not needed.

seek feedback on the Grid West proposal from its customers. A degree of support reached by the regional representatives group meeting in Portland is instructive, but it does not necessarily measure whether a critical mass of support exists across the region.

From our vantage point we have yet to see a clear and definitive answer to any one of these three threshold questions.

Indeed, it may not be possible to answer any one of these questions at this point because the practical and technical details of what Grid West is proposed to do are still in development.

However, without clear affirmative answers to these questions, we find it troubling that the region's focus has been directed to the form and substance of *corporate bylaws* that *presume* that a significant institutional change is necessary, cost-efficient, practical, and the simplest solution adequate to achieve grid improvements.

Without clear answers to these questions it would appear that the Grid West proposal has the "cart before the horse." The focus of the proposal is too much on what kind of institution can balance "independence" with "accountability" and not enough on what minimum cost and minimum risk actions are available to address transmission issues with balanced and objective decision-making to solve problems consistent with the region's needs, values and principles.

We do not disagree with BPA that it is constructive and appropriate to examine the pluses and minuses of a proposal to form an entirely new institution like Grid West. But it is similarly important that BPA participate fully in and consider approaches that rely less on creating new institutions and more on revising the relationship among and the roles performed by existing institutions. The latter might allow grid improvements to be made sooner than the considerable time necessary to build a new institution and, if these efforts are successful, might allow the region to avoid the costs, risks, complexity, and controversy that formation of a new institution likely will entail.²

² BPA staff have represented to us that, even if the controversies and challenges facing the formation of Grid West were to be resolved, the new institution would not be up and running before 2009 – five years from now. If some grid problems are acute, it makes sense to get on with addressing them today without awaiting a grand institutional solution.

BPA should not affirm “Decision Point 1” unless it is satisfied that it has answered all three of the threshold questions above in the affirmative--and that it can defend those answers.³

II. Do the Draft Bylaws Appropriately Balance Regional Accountability with Independence and Workability?

We noted in our preceding response that threshold questions about whether a new “independent” institution is necessary have yet to be answered. For that reason we *do not* favor adopting corporate bylaws to govern a new institution at this point. However, in response to BPA’s question we have some observations on the general issues of “regional accountability,” “independence, “ and “workability.”

The question, and much of the Grid West governance discussion, is based on a mistaken concept of accountability and an inappropriate emphasis on the abstract concept of independence. The notion that independence and accountability can or should be “balanced” suggests that independence is an obtainable objective and that it is necessarily at odds with accountability. The notion also appears to be that accountability can be diluted so as to not interfere with the objective of independence.

The emphasis on balancing accountability and independence appears to stem from a basic misunderstanding about what Grid West would be. Grid West is proposed to be a new organization that manages grid functions and sells grid services. *Grid West is proposed to be a **utility** not a **government**. By blending some elements, not all, of government and corporate functions, the proposal would produce an institution with weak lines of **both** government and corporate accountability.*

The important issue is how the Grid West Board and managers would be held accountable for decisions that affect citizens/ratepayers and decisions that affect the owners of invested assets. Whom do citizens or businesses call if something goes wrong and how do the parties they surely will call--state or local government, state or local utility regulators--hold Grid West accountable for

³ “Decision Point 1” is the decision to adopt the bylaws proposed to govern the developmental and operational phases of Grid West.

decisions or responsible for redress in the instance of failure? To whom would Grid West be ultimately accountable and under what authority?

The advisory mechanisms in the proposed governance structure provide some avenues for regional interests to *influence* the decisions and operations of Grid West. But those mechanisms do *not* accomplish any new, true or meaningful form of accountability. *Mandatory consultation and advisory committees do not equate to accountability.* Indeed, the formation of Grid West would diminish existing lines of regional authority and accountability, as we will elaborate below.

But even as a utility, Grid West is unusual. Private utilities are held accountable by their stockholders for the financial performance of assets supplied by investors. Private utilities are held accountable for their performance in serving the public by their government regulators. Public utilities are held accountable for service to the public and financial performance by their voter/owners via citizen-elected boards or city government officials.

The Grid West proposal exhibits aspects of a private corporation, yet it provides the bulk of its services through the assets of other corporations and is not directly accountable to the stockholders that own those assets. Grid West has no stockholders of its own. Moreover, the performance of Grid West in serving the public would be remote from the direct oversight of the region's state utility regulators and the locally elected officials who govern public power utilities.

To substitute for these conventional forms of public utility accountability, the Grid West proposal struggles to create a government-like corporate membership and decision-making process.⁴ We do not fault the effort, but the product is a hodge-podge.⁵ In reality, the proposed membership structure and processes

⁴ The membership structure is evidently intended to achieve balanced representation for the parties ultimately affected by Grid West's policies and practices. Electricity consumers will ultimately foot the full bill for Grid West and realize the benefits, costs, and risk of the new institution. Yet, the proposed membership structure accords end-use consumers only 1/5 of the voting power in that structure—equal to the voting power of the purely commercial interests of the generator class.

⁵ It is not at all clear what *practical* recourse regional electricity consumers would have to challenge Grid West decisions or seek redress should those decisions produce bad outcomes. For example, consider the following plausible scenario:

a) Utilities select to take transmission for retail load under the Grid West tariff; and

cannot achieve any meaningful level of accountability because they lack any real authority. Real authority must come from the citizens through real government, or from the investors through real control of invested assets. The Grid West proposal fails the former because the membership is not a government and it fails the latter because the asset owners cannot exercise control over their investments.

This lack of any meaningful accountability appears to be what the architects of Grid West desire because it is the most conducive to “independent” decision-making on the part of the Grid West Board. But just who or what the Board should be independent from depends on who’s posing (or answering) the question. Some would say the Board should be independent from any commercial interest. Others would say the Board should be independent from any stakeholder. Still others would even appear to say that, once the Board is seated, its decisions should be insulated from the interests of the consumers who depend on the electricity services the Board’s decisions will affect. Basically it would appear that independence is the panacea for all parties to believe decisions will not be influenced by interests counter to their own.

Independence as an abstract concept is not very useful in this context. No institution or government makes decisions that are fully independent of influence, nor should they. Any institution with significant responsibility over important transmission policy and practices with major economic consequences will be subject to intense lobbying by affected parties and will be funded, in some manner, by some or all of those parties. One can reasonably expect that the institution will respond to those influences.

We understand and agree that one goal embodied in the abstract term “independence” is to insulate against undue commercial (particularly

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- b) Grid West decides that facilitation of generator interconnection requires system-wide rolled-in rate recovery of interconnection-driven expansion costs.

Under this hypothetical scenario the major transmitting utilities are assured cost-recovery (perhaps at bonus rates of return too) under a FERC tariff effective for all transmission including native load service. Generators are assured interconnection with the costs spread to all system users. The interests of these two classes (12 votes) are aligned. The consumers (6 votes) pay the bill. Consumers can never muster sufficient support for a super-majority remand and may not be able to achieve even a majority of membership voting power to oppose such a policy. So, what recourse do consumers then have? Who do they call? FERC is the only clear answer, which is not a very satisfying one.

generation) bias in decisions that affect operation of the grid.⁶ Another important goal is to accomplish a region-wide perspective and to accomplish decisions that otherwise could involve disputes among multiple systems and multiple actors. Elimination of bias, however does *not* require independence from accountability, but rather requires objective and balanced decision-making. Similarly, resolution of disputes and facilitation of joint action by multiple parties do not require independence from accountability. They require objective and balanced decision-making and effective dispute resolution mechanisms.

Focusing on independence as the objective not only misses the point that the real goal is objective and balanced decisions, it also confuses the search for ways to achieve objectivity and balance in decisions by setting up a mistaken opposition between independence and accountability. Accountability is not the enemy of objectivity. Independence is neither an exclusive nor even a certain means to ensure that decisions are unbiased and made with objectivity. Moreover, independence itself cannot ensure that when decisions balance competing private interests that such a balance is struck consistent with the region's public interest.⁷

When considering our second threshold question⁸ we hope that BPA will fully address a range of options—not just the concept of independence—that may be available to accomplish the real and important goal of objectivity in decisions and dispute resolution.⁹ Among the available options are inter-utility contracts and multi-party agreements that leave existing lines of authority and accountability intact.

Ultimately, if formed as proposed, Grid West will be a new utility accountable to the regulators with jurisdiction over the functions it performs and the services it provides to the public, i.e., principally FERC. This jurisdiction cannot be delegated to some new institutional governance structure or to a new regional

⁶ We note in this regard that, despite allegations and speculation, no body of evidence has been produced that such bias exists today, or that any such bias that may exist is undue given the public obligations of BPA and other transmission providers.

⁷ The proposed bylaws establish “principles” for decision-making in both Article III (Purposes) and Article VII (Standards of Care). While these principles include the important themes (e.g., that benefits should exceed “burdens,” and that cost-shifts should be minimized or mitigated) they do not include other important regional values like least-cost solutions (as distinct from positive benefit solutions).

⁸ Is the proposal the simplest that can practically do the job with the least disruption and cost to existing institutions, lines of authority, and lines of accountability?

committee. Consequently, and regardless of the effort to inject regional influence in the structure, Grid West would be formally accountable chiefly to FERC.

This is a very important point for BPA and the region to think about as the implications of BPA's joining in the formation of a new utility are examined. *BPA is a government agency.* BPA's lines of accountability follow lines of representative government decision-making authority—the executive branch of the federal government and Congress, particularly the region's congressional delegation. If BPA dedicates its facilities to the operation of a new utility, those lines of accountability will shift away from the region's elected representatives in Congress and toward less regionally responsive regulators in Washington DC.¹⁰ This shift inevitably attenuates the lines of authority through which the region and its electricity consumers can hold some party (BPA or Grid West) accountable for transmission decisions and the power system consequences of those decisions.

A similar attenuation of meaningful accountability would occur if investor-owned utilities (who are now accountable to state regulators) or consumer-owned utilities (who are now accountable to local officials or directly to voters) dedicate operation of their transmission systems to a new, federally regulated, utility.¹¹ Parties that today can advocate their interests in local or state regulatory proceedings would lose that forum and need to look to decision-making at FERC to protect their interests.

BPA and the region have had some significant and dissatisfying experiences in relying on the federal regulator to protect the region's electricity consumers. The

¹⁰ Some would argue that the accountability to the Congressional delegation would not be diminished. If that argument is correct, the formation of Grid West will do nothing to remove the bias or BPA-centric decision-making that some point to as justification for forming Grid West.

¹¹ The investor-owned utilities in Washington would need to seek approval from the WUTC to dedicate operation of their transmission assets to a new utility. The WUTC can only grant such approval if it finds the proposal to be in the public interest. The WUTC is required by law to make such a decision based on a record of evidence. To date no such approval has been requested and no such evidence has been presented. Participation of the WUTC in these comments to BPA serves to raise questions, highlight issues, and offer suggestions to BPA. WUTC participation in these comments does not constitute any conclusion regarding participation of WA investor-owned utilities in Grid West or any other transmission-related institutional arrangement. The same is true for the Public Counsel Section of the Washington Attorney General Office.

future may hold better decisions, but the past teaches hard lessons. We have little basis for confidence that shifting oversight to a federal regulator will produce service and costs that will further Washington State's policy objective of reliable and affordable electricity service with an emphasis on end-use efficiency and renewable energy.

As we have already noted, the fundamental questions facing BPA and the region boil down to 1) Are the problems worth solving? and 2) Do we need a new utility to solve them? The fundamental questions are not about the governance of a utility if one *is* found to be necessary.

The important point for BPA and the region to weigh is whether the benefits of forming a new regional utility outweigh the costs and risks inherent in the inevitable loss of existing local accountability.

To summarize, on the matter of regional accountability:

- 1) The proposed Grid West governance structure does not enhance or even preserve the existing forms of regional accountability.
- 2) The proposed Grid West only provides ways for regional interests to advise and possibly influence Grid West—this is not accountability.
- 3) The formation of Grid West would create a federally regulated utility and diminish the practical degree to which the region can today hold BPA and other transmission providers accountable.

Turning finally to workability, we believe that this is a very important objective. If the answers to the three threshold questions we noted earlier become a clear “yes,” and the decision of BPA and the region is to form a new utility, every effort should be made to ensure that the new utility can understand and efficiently fulfill the tasks assigned to it. The problem with the proposed bylaws in this regard lies in their complex and diffuse manner of electing, removing and replacing board members, and of the way and membership make important decisions. Various scenarios could produce paralysis, vacant seats, or a “tyranny of the minority.” In the meantime, the utility must continue to function. The way to think of this issue is by trying to answer questions like: What happens when things go wrong? When the CEO does not perform? When there is a high-

stakes and divisive proposal? How, *and how long will it take*, to resolve the problem?

In most corporate settings, the board can remove and replace the CEO, and the stockholders, by majority share, can remove and replace the board. In most government settings, the voters, by majority vote, can replace elected officials, who appoint executive decision-makers. The Grid West governance proposal is far more complex—so much so that its very complexity is a bar to its understandability and execution. Ultimately, workability depends on accountability, because it is the lines of authority and accountability that determine who makes decisions and how those decisions are enforced, checked, or revised. Because we don't know whether the proposed governance structure will actually work when confronted with difficult and controversial decisions, *we urge BPA to run several "stress tests" that would reveal how and whether decisions could be reached under various scenarios in which the region is divided in multiple ways over an important subject under Grid West's purview.*

III. Have the Draft Bylaws Addressed the Governance Concerns Expressed Earlier in the Region?

As we have already noted, the threshold questions about whether the region should form Grid West are **not** fundamentally questions of governance. We have also noted that consequences of forming a new utility do inevitably affect issues of accountability and BPA should consider these carefully. We perceive that a key concern raised in the region is loss of regional control and accountability.¹² The Grid West proposal has attempted to address that concern with a complex governance structure that provides for multiple avenues of regional advice and consultation. But fundamentally, the loss of existing lines of regional accountability is not and cannot be overcome with any particular form of utility governance or through layers of regional advice and consultation.

The Washington agencies do not take the position that formation of a new utility like the proposed Grid West should necessarily be rejected for the single reason that it would attenuate regional accountability. We do take the position that the threshold questions, outlined earlier, that bear on whether it makes sense to form a new utility and whether a new utility is the only and best way to address the

¹² In this regard we direct BPA's attention to the comments submitted by the Public Power Counsel on August 23, 2004.

region's needs have yet to be answered. Consequently, we urge BPA to focus carefully on these questions and not to take any irreversible steps toward Grid West formation before it is satisfied that it can present and defend affirmative answers to those questions.

Finally, we note that, though the membership structure proposed for Grid West does not provide meaningful accountability, it does provide channels for input and advice to Grid West from a broad range of regional interests. While we have serious reservations about the manner in which those interests are allocated representation in the membership structure, we do acknowledge that the community of interests in the proposed Grid West membership is broad.¹³ The membership is proposed to include: the parties that transact commercial business over the region's grid facilities as well as the parties that provide transmission service; parties that rely on those services to meet statutory obligations; public interest groups; and the consumers who ultimately rely on dependable transmission services.

Keeping in mind our third threshold question—breadth of support—we observe that, if a membership organization is formed to provide a channel for the interests of the region to influence Grid West, major decisions concerning adoption of changes to the bylaws and changes to the scope of Grid West functions and services are more likely to be successful and sustainable if they carry the affirmative endorsement of the membership.

The proposed bylaws incorporate not only the ability of Grid West to expand the scope of its services and roles, but also a requirement that the board consider certain “special issues” on a mandatory schedule. These two characteristics create both an expectation and a bias in favor of scope expansion. Much of the bylaw document is devoted to the mechanisms and decision process by which Grid West is allowed to self-evolve. We believe it would be a mistake to allow for significant self-evolution and expansion of scope without the need of the

¹³ As we noted in fn 4, above, consumers are only granted 1/5 of the voting power of the membership. Furthermore, looking at the allocation of voting power from a state perspective, there is no weighting by population or electricity load. Thus, the most populous states with the highest electricity loads and who provide the most electricity revenue have the same representation as those states with the least. As officials of the state with by far the greatest population and electricity expenditures, we are, naturally, quite concerned about being under-represented and are thus even more reluctant to surrender any state authority to a new entity or to FERC.

membership to endorse and regulators to approve modifications to the corporation's bylaws.

If a new transmission entity is to be formed, it is most likely to be effective, efficient, and workable, and it is most likely to achieve broad regional support, if its scope is clear—at the outset--and it cannot engender the controversy and intra-regional divisions that self-evolution would inevitably produce. If the need for changes in the scope of services arises, the endorsement of the membership can and should be sought to change the bylaws and appropriate regulatory approvals should be obtained to ensure accountability for any such change.

Regardless of how the membership may or may not inject regional influence in Grid West decisions, it bears repeating, however, that the membership of Grid West is not a government and does not possess the ultimate authority to hold Grid West accountable to serve the public interest. Regardless of the judgments of Grid West membership, or the “independence” of the decisions of the Grid West Board, the only real accountability is through the government regulators empowered to police Grid West's services and rates.¹⁴

Thank you for the opportunity to provide comments on this important matter. We will continue to pay close attention to the progress of any and all proposals to improve transmission grid operations in the Pacific Northwest to support an adequate and environmentally sound electricity supply for Washington's citizens.

¹⁴ This is why it is unlikely that the regulators with any authority over Grid West or any authority over the utilities who participate in Grid West could legally serve also as voting members of the Grid West Membership.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

/s/ _____
Marilyn Showalter, Chairwoman

/s/ _____
Richard Hemstad, Commissioner

/s/ _____
Patrick J. Oshie, Commissioner

OFFICE OF THE ATTORNEY GENERAL OF WASHINGTON

/s/ _____
Simon J. ffitich, Assistant Attorney General
Public Counsel Section

WASHINGTON STATE DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT

/s/ _____
Juli Wilkerson, Director

Contacts:

Dick Byers, Senior Electricity Policy Advisor (360-664-1209)
Washington Utilities and Transportation Commission

Matt Steuerwalt, Policy Analyst (206-389-3040)
Public Counsel Section, Washington Attorney General

Tony Usibelli, Assistant Director, Energy Policy (360-951-2554)
Department of Community, Trade and Economic Development